

1  
2  
3  
4  
5  
6  
7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
10

11 SIR MICHAEL DYESS,

12 Plaintiff,

13 v.

14 R. VASQUEZ LOPEZ, et al.,

15 Defendants.  
16

Case No. 2:23-cv-06455-MEMF (JDE)

**ORDER ACCEPTING FINDINGS AND  
RECOMMENDATION OF UNITED  
STATES MAGISTRATE JUDGE**

17  
18 Pursuant to 28 U.S.C. § 636, the Court has reviewed the Complaints, other  
19 records on file, and the Report and Recommendation (“Report”) of the United  
20 States Magistrate Judge. Further, the Court has engaged in a *de novo* review of  
21 those portions of the Report to which objections have been made.

22 In the First Amended Complaint, the operative pleading, Plaintiff alleges  
23 violations of the Eighth Amendment based on an incident in prison during which  
24 Plaintiff was assaulted and pepper-sprayed. (ECF No. 8.) The Magistrate Judge’s  
25 Report recommends denial of Plaintiff’s Request to Proceed In Forma Pauperis and  
26 dismissal of this action with prejudice because Plaintiff has failed, despite being  
27 afforded opportunities, to file an Amended Complaint that states a claim on which  
28 relief may be granted. (ECF No. 21.) For the following reasons, Plaintiff’s

1 objections to the Report (ECF No. 22) do not warrant a change to the Magistrate  
2 Judge's findings or recommendation.

3 Plaintiff objects that his Complaint is not frivolous or malicious and does not  
4 seek monetary relief against someone who is immune from such relief. (ECF No.  
5 22 at 1.) The Report, however, did not recommend dismissal on those grounds.  
6 The Report recommended dismissal because Plaintiff failed to state a claim on  
7 which relief may be granted. 28 U.S.C. § 1915(e)(2)(B)(ii). Specifically, the  
8 Report found that Plaintiff failed to state a claim for failure to protect him from  
9 violence from other inmates because Plaintiff did not allege that Defendant knew  
10 that Plaintiff's cell door should not be opened or that Plaintiff was at risk of assault.  
11 (ECF No. 21 at 8.) The Report also found that Plaintiff failed to state a claim for  
12 excessive force because Plaintiff did not allege that Defendant pepper-sprayed him  
13 maliciously and sadistically to cause harm. (*Id.* at 9.) Plaintiff does not challenge  
14 these findings from the Report.

15 Plaintiff objects that the only operative pleading is the First Amended  
16 Complaint. (ECF No. 22 at 1.) But the Report's findings are based on the First  
17 Amended Complaint. (ECF No. 21.)

18 Plaintiff objects that the prison where he is incarcerated is not part of the  
19 "pilot program" for in forma pauperis applications (ECF No. 22 at 1), in which  
20 certain prisons provide prison account statements as part of those applications. But  
21 the Report's findings are not based on that fact. The Report recommends dismissal  
22 because Plaintiff has failed to state a claim on which relief may be granted, not  
23 because of failure to provide a prison account statement through the pilot program.

24 Plaintiff objects that his motion to proceed with this action may have been  
25 removed from his letters to the Court. (ECF No. 22 at 1.) The docket reflects,  
26 however, that the Court received Plaintiff's motion to proceed in forma pauperis.  
27 (ECF No. 2.) Plaintiff does not specify any other motions that were left  
28 unaddressed by the Court.

1 For these reasons, Plaintiff's objections to the Report are overruled.

2 **ORDER**

3 IT IS ORDERED that (1) the Report and Recommendation of the Magistrate  
4 Judge is accepted and adopted; (2) Plaintiff's Request to Proceed In Forma Pauperis  
5 is denied; and (3) Judgment shall be entered dismissing this action with prejudice.

6  
7 DATED: February 11, 2025



8  
9  
10 MAAME EWUSI-MENSAH FRIMPONG  
11 UNITED STATES DISTRICT JUDGE  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28